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IN THE
Supreme Court of the United States

October Term, 1945. No. 601.

Elizabeth C. Lownsbury, Mrs. Evelyn H. Brantley, Richard C. Hassinger, William H. Hassinger, Mrs. Virginia H. Lange, Mrs. Leonora McCrossin, Robert Ingalls, Robert Ingalls, Jr., Ellen Gregg Ingalls, Ingalls Iron Works Company, Henry R. Howze, Alfred J. Snyder, and The First National Bank of Birmingham as:—Agent for Kate Porter Lewis, Agent for Hugh Kaul, Agent for Virginia Kaul Greene, Trustee for Crawford T. Johnson, Jr., Trustee of Estate of Nathan L. Miller, Trustee of Estate of Charles B. Patrick, Trustee for Mrs. Virginia E. Hassinger, Trustee for Virginia H. Lange, Trustee for Mrs. Leonora H. McCrossin, Trustee for Mrs. Evelyn H. Brantley, Trustee for Mrs. Lucile H. Cabaniss, Trustee for William H. Hassinger, Trustee for Richard C. Hassinger, Trustee for Hugh Kaul, Trustee for Mrs. Roy Head Kaul, Trustee for Mrs. Virginia Kaul Greene, Executor of Estate of Lafayette R. Hanna and Executor of Estate of Crawford T. Johnson,

Petitioners,

v.

Securities and Exchange Commission
and
The Commonwealth and Southern Corporation,

Respondents.

MOTION TO DEFER.

ALFRED J. SNYDER,

1144 Fidelity-Philadelphia Building,
Philadelphia 9, Pennsylvania,

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Philadelphia 9, Pennsylvania,

Attorneys for Petitioners.



IN THE
Supreme Court of the United States.

October Term, 1945.

No. 601.

ELIZABETH C. LOWNSBURY, MRS. EVELYN H. BRANTLEY,
RICHARD C. HASSINGER, WILLIAM H. HASSINGER, MRS.
VIRGINIA H. LANGE, MRS. LEONORA MCCROSSIN, ROBERT
INGALLS, ROBERT INGALLS, JR., ELLEN GREGG INGALLS,
INGALLS IRON WORKS COMPANY, HENRY R. HOWZE,
ALFRED J. SNYDER, and THE FIRST NATIONAL BANK OF
BIRMINGHAM as: Agent for Kate Porter Lewis, Agent
for Hugh Kaul, Agent for Virginia Kaul Greene, Trust-
tee for Crawford T. Johnson, Jr., Trustee of Estate of
Nathan L. Miller, Trustee of Estate of Charles B.
Patrick, Trustee for Mrs. Virginia E. Hassinger, Trust-
tee for Virginia H. Lange, Trustee for Mrs. Leonora H.
McCrossin, Trustee for Mrs. Evelyn H. Brantley, Trust-
tee for Mrs. Lucile H. Cabaniss, Trustee for William H.
Hassinger, Trustee for Richard C. Hassinger, Trustee
for Hugh Kaul, Trustee for Mrs. Roy Head Kaul, Trust-
tee for Mrs. Virginia Kaul Greene, Executor of Estate
of Lafayette R. Hanna and Executor of Estate of
Crawford T. Johnson,

Petitioners,

v.

SECURITIES AND EXCHANGE COMMISSION

and

THE COMMONWEALTH AND SOUTHERN CORPORATION,
Respondents.

MOTION TO DEFER AND REASONS THEREFOR.

*To the Honorable, the Chief Justice of the United States
and the Associate Justices of the Supreme Court of the
United States:*

The petitioners, Elizabeth C. Lownsbury, Mrs. Evelyn H. Brantley, Richard C. Hassinger, William H. Hassinger, Mrs. Virginia H. Lange, Mrs. Leonora McCrossin, Robert Ingalls, Robert Ingalls, Jr., Ellen Gregg Ingalls, Ingalls Iron Works Company, Henry R. Howze, Alfred J. Snyder, and The First National Bank of Birmingham as: Agent for Kate Porter Lewis, Agent for Hugh Kaul, Agent for Virginia Kaul Greene, Trustee for Crawford T. Johnson, Jr., Trustee of Estate of Nathan L. Miller, Trustee of Estate of Charles B. Patrick, Trustee for Mrs. Virginia E. Hassinger, Trustee for Virginia H. Lange, Trustee for Mrs. Leonora H. McCrossin, Trustee for Mrs. Evelyn H. Brantley, Trustee for Mrs. Lucile H. Cabaniss, Trustee for William H. Hassinger, Trustee for Richard C. Hassinger, Trustee for Hugh Kaul, Trustee for Mrs. Roy Head Kaul, Trustee for Mrs. Virginia Kaul Greene, Executor of Estate of Lafayette R. Hanna and Executor of Estate of Crawford T. Johnson, respectfully move your Honorable Court to defer consideration of the Petition for Writ of Certiorari in the above entitled cause, and as reasons therefor state as follows:

1. On November 13, 1945 the Petitioners filed in this Court, a Petition for Writ of Certiorari to the United States Circuit Court of Appeals, for the Third Circuit, and Brief in support thereof. Said Petition relates to a judgment of the said Circuit Court, dated September 11, 1945, dismissing a Petition for Review of an Order of the Securities and Exchange Commission, dated June 30, 1945, made final by the denial of a Petition for Rehearing by Order of July 18, 1945; all of which related to the matter of the reorganization of The Commonwealth and Southern Corporation, so that it might comply with the provisions of the Public Util-

ity Holding Company Act of 1935 (49 Stat. 803; 15 U. S. C. Sec. 79).

2. Since the Court below handed down its judgment of September 11, 1945, the Securities and Exchange Commission on November 1, 1945 issued an Order which modified the Order of June 30, 1945. This Order, of November 1, 1945, required The Commonwealth and Southern Corporation, within fifteen days, to eliminate from its plan of reorganization a provision for a vote of approval by its stockholders.

3. On November 6, 1945, these Petitioners filed with the Securities and Exchange Commission a Petition for a Rehearing upon said Order of November 1, 1945; and the Commission by its Order of November 19, 1945 denied said Petition for Rehearing.

4. On November 9, 1945 the Board of Directors of The Commonwealth and Southern Corporation filed with the Securities and Exchange Commission a modification of the plan of reorganization in which it stated it "acquiesced in the elimination of the provision for stockholders' approval on the express condition, however, that the other modifications are also approved by the Commission." The other modifications referred to made basic changes in the plan of reorganization. The Commission has not yet acted upon this action of the Board of Directors of Commonwealth.

5. These recent proceedings, when the Commission has finally acted thereon, may have a bearing upon the judgment of the Circuit Court below since that judgment was predicated, at least in part, upon the position that the Order of the Commission of June 30, 1945, was conditional upon approval of the plan of reorganization by the stockholders of Commonwealth and Southern Corporation, and therefore was interlocutory (R. 68-69). Also, when the Commission has finally acted, orderly procedure would require that the Petition for Review be amended in keeping with the modifi-

cation of the Order sought to be reviewed; that the Court below be afforded an opportunity to reconsider its judgment in the light of the modification of the Order, and that the record to this Court be supplemented so that the entire matter may be heard upon the facts and pleadings as altered.

6. This request that the matter be deferred is not made for any purposes of delay, but solely that the matter be ultimately determined on the record as affected by the modification by the Commission of its Order of June 30, 1945, by the Order of November 1, 1945, and as it may be further affected by such action as the Commission may take upon the modifications filed by Commonwealth and Southern Corporation on November 9, 1945.

WHEREFORE, the Petitioners respectfully move that your Honorable Court defer consideration of their Petition for Writ of Certiorari to the United States Circuit Court of Appeals, for the Third Circuit, in the above entitled matter, until such a time as the Securities and Exchange Commission has finally acted in the matters aforesaid; until appropriate action can be taken in the Court below to bring such action upon the record and permit that Court to determine if the changed record affects its judgment; and to then supplement the record to this Court so that the matter may be determined upon the altered facts and pleadings.

Respectfully submitted,

ALFRED J. SNYDER,
WILLIAM H. BRANTLEY, JR.,
ELIZABETH C. LOWNSBURY,

By

ALFRED J. SNYDER.

